Department of Energy
Washington, DC 20585

AUG 0 9 2004

MEMORANDUM FOR DISTRIBUTION

FROM: James T. Campbell
JAMES T. CAMPBELL
DEPUTY DIRECTOR, OFFICE OF MANAGEMENT, BUDGET AND EVALUATION/DEPUTY CHIEF FINANCIAL OFFICER

SUBJECT: Non-Monetary Loss Contingencies

Pursuant to 31 U.S.C. § 3515, KPMG, LLP (KPMG), under contract with the Office of Inspector General, is conducting the Department-wide audit of the consolidated financial statements of the Department of Energy. The audit conducted by KPMG will be as of and for the fiscal year ended September 30, 2004. KPMG has inquired about non-monetary loss contingencies, defined below, that have a financial impact on the Department's financial statements. The purpose of this memorandum is to request your assistance in responding to that inquiry.

In accordance with Generally Accepted Accounting Principles, the Department is required to report loss contingencies in its financial statements. Most loss contingencies are legal matters involving the possible payout of cash to the claimant. For these types of contingencies, the Office of General Counsel will assist in responding to KPMG's inquiry; however, we need your assistance in identifying loss contingencies that are not expected to result in a cash payout to a claimant but still may result in a material impact on estimated liabilities recorded or disclosed in the consolidated financial statements.

These types of loss contingencies typically result from rulings requiring the Department to perform future actions that are intended to correct damages occurring from past practices. Examples include claims challenging corrective action decisions made by the Department, such as the National Environmental Policy Act claims challenging Environmental Impact Statements or Records of Decision; the "Waste Incidental to Reprocessing" claim challenging the Department's accelerated cleanup plan for high level waste; and the recent claim by the United States Enrichment Corporation alleging contaminated uranium hexafluoride. If successful, claimants in such matters would not receive monetary damages, but the resolution of the contingency may create or increase liabilities relating to corrective actions. Such matters are referred to as "non-monetary loss contingencies" for purposes of this request.

Since the program offices are in the best position to assess the financial impact of non-monetary loss contingencies to their respective programs, we are requesting that you provide the Office of Inspector General (with copies to the General Counsel and to me) the following information with respect to these matters:

1. The nature of the matter;

2. The progress of the case to date;

3. The Government's response or planned response;

4. An evaluation of the likelihood of unfavorable outcome. (Categorize likelihood as probable, reasonably possible, or remote.);

5. An estimate of the amount or range of potential loss, if one can be made, for losses considered to be probable or reasonably possible; and

6. The names of the program official and the Department's attorney, if applicable, handling the case and names of any outside legal counsel representing or advising the Government in the matter (Department of Justice or outside law firms).

The above information is only needed where the potential loss contingency exceeds $75 million individually, or groups of similar items involving lesser amounts that exceed $200 million in aggregate. You should furnish your response, including negative confirmation if applicable, by August 31, 2004.

Please address your reply to Darryl Wittenburg, NETL-PGH, IG-34. Also, please send a copy of your reply to Richard Loyd, Director, Office of Financial Control and Reporting, ME-12. If you have any questions, call Mr. Loyd at (301) 903-4190.

cc:
Deputy General Counsel,
Litigation, GC-30
Manager, Capital Regional
Audit Office, IG-34

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